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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Chris Kohler,)	CV 11-4451 RSWL (SPx)
)	
Plaintiff,)	
	)	ORDER Re: Plaintiff's
vs.	)	Motion for Summary
	)	Judgment, or Partial
	)	Summary Judgment in the
	)	Alternative, Against
Bed Bath & Beyond of	)	Defendant Bed Bath &
California, LLC, et. al	)	Beyond of California,
	)	LLC [48], and Cross-
	)	Motion for Summary
Defendants.	)	Judgment of Defendant
	)	Bed Bath & Beyond of
	)	California Limited
	)	Liability Company [57]

On July 19, 2012, Plaintiff Chris Kohler's ("Plaintiff") Motion for Summary Judgment, or Partial Summary Judgment in the Alternative, Against Defendant Bed Bath & Beyond of California, LLC [48] and Defendant Bed Bath & Beyond of California, LLC's ("Defendant") Cross-Motion for Summary Judgment of Defendant Bed Bath & Beyond of California Limited Liability Company [57] came on for regular calendar before the Court. The

1 Court having reviewed all papers submitted pertaining
2 to these Motions and having considered all arguments
3 presented to the Court, **NOW FINDS AND RULES AS FOLLOWS:**

4 As a preliminary matter, the Court **OVERRULES**
5 Plaintiff's Evidentiary Objections and **DENIES**
6 Defendant's Requests for Judicial Notice. The Court
7 hereby **DENIES** Plaintiff's Motion for Summary Judgment.
8 The Court **GRANTS** Defendant's Cross-Motion for Summary
9 Judgment as it relates to Plaintiff's federal Americans
10 with Disabilities Act ("ADA") claims. Accordingly, the
11 Court **DISMISSES without prejudice** Plaintiff's remaining
12 state law claims.

13 **I. BACKGROUND**

14 Plaintiff is physically disabled and uses a
15 wheelchair to get around. On May 24, 2011, Plaintiff
16 brought suit against various retail and restaurant
17 establishments located in the Lake Elsinore
18 Marketplace, a shopping center located in Lake
19 Elsinore, California. In his Complaint, Plaintiff
20 alleges that the establishments violated the ADA as
21 well as two California state statutes, the Unruh Civil
22 Rights Act ("Unruh Act") and the California Disabled
23 Persons Act ("CDPA") [1]. With the exception of
24 Defendant Bed Bath & Beyond, all other Defendants named
25 in the Complaint have been dismissed from this Action.

26 Plaintiff alleges that during three visits to
27 Defendant's Lake Elsinore, California location he was
28 denied full and equal access because of his disability.

1 Plaintiff's last visit was on May 16, 2012. The
2 specific violations of the ADA and state law that
3 Plaintiff alleges against Defendant are as follows:

- 4
- 5 - The slope and cross slopes of disabled parking
6 spaces exceed the two percent requirement under ADA
7 regulations
- 8 - The slope and cross slopes of access aisles in the
9 parking lot exceed the two percent requirement
10 under ADA regulations
- 11 - The bathroom stall door is not self-closing
- 12 - The strike side¹ clearance when entering the men's
13 restroom is insufficient
- 14 - The front roll of toilet paper is more than twelve
15 inches from the front of the toilet
- 16 - The operable part of the paper towel dispenser is
17 mounted too high
- 18 - The paper towel dispenser requires pinching,
19 twisting, or grasping to operate
- 20 - The pipes beneath the sink in the men's restroom
21 are not properly insulated
- 22 - The strike side clearance when exiting the men's
23 restroom is insufficient

24 **II. LEGAL STANDARD**

25 Summary judgment is appropriate when the pleadings,
26

27 ¹ When referring to doors, the strike side is the
28 side on which the door opens, opposite the hinges.

1 affidavits, and other supporting papers demonstrate
2 that there are no genuine issues of material fact, and
3 the moving party is entitled to prevail as a matter of
4 law. Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett,
5 477 U.S. 317, 322 (1986). When making this
6 determination, the Court must view the record in the
7 light most favorable to the non-moving party. Anderson
8 v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). A
9 "genuine" dispute is one that is supported by evidence
10 sufficient to permit a reasonable jury to find in favor
11 of the nonmoving party. Id. at 247-48.

12 **III. ANALYSIS**

13 **A. Evidentiary Objections**

14 As a preliminary matter, the Court evaluates
15 Plaintiff's Evidentiary Objections to three
16 Declarations submitted by Defendant.

17 First, the Court **OVERRULES** Plaintiff's objections
18 to the Declaration of Dustin Jaggli ("Jaggli Decl.")
19 and **OVERRULES** Plaintiff's objections to the Declaration
20 of Steve Cerda ("Steve Cerda"). The Court finds that
21 Defendant's non-disclosure of both Jaggli and Cerda
22 prior to the filing of the instant Motions was
23 substantially justified. Fed. R. Civ. P. 37(c)(1).
24 Accordingly, exclusion of their Declarations in the
25 instant Motions is unwarranted.

26 In addition, the Court **OVERRULES** Plaintiff's
27 objections to the Declaration of Larry Wood ("Wood
28 Decl."). Plaintiff objected to the Wood Declaration on

1 the grounds that the Declaration is a sham and that
2 Wood is an undisclosed witness. However, the Court
3 finds that Defendant promptly corrected and adequately
4 explained the error regarding the date on the signature
5 page of the Declaration. Furthermore, Defendant was
6 not required to disclose Wood as an expert witness
7 prior to the filing of the instant Motions. The
8 deadline to disclose expert witnesses had not yet
9 passed. Fed. R. Civ. P. 26(a)(2)(D) (deadline to
10 disclose experts is 90 days before trial).

11 **B. Requests for Judicial Notice**

12 As an additional preliminary matter, the Court
13 **DENIES** Defendant's Requests for Judicial Notice of
14 filings and documents related to two other Central
15 District cases.

16 **C. Plaintiff's Standing Under the ADA**

17 The main issue in Plaintiff's Motion and
18 Defendant's Cross-Motion surrounds the existence of
19 alleged barriers that violate the ADA. However,
20 Defendant has also argued that Plaintiff lacks standing
21 under the ADA because he has failed to adequately
22 allege injury-in-fact. Specifically, Defendant
23 contends that Plaintiff has not alleged that he was
24 actually prevented from making full use of Defendant's
25 facility. Since adequately alleging injury-in-fact is
26 constitutionally required, the Court will first address
27 Plaintiff's standing in this case.

28 In order to have constitutional standing, Plaintiff

1 must demonstrate that (1) he has suffered an injury-in-
2 fact that is both concrete and particularized and
3 actual or imminent; (2) the injury is traceable to the
4 defendant's challenged action; and (3) it is likely
5 that the injury will be redressed by a favorable
6 decision. City of Sausalito v. O'Neill, 386 F.3d 1186,
7 1197 (9th Cir. 2004); see also Lujan v. Defenders of
8 Wildlife, 504 U.S. 555, 560 (1992). However, courts
9 have been instructed to take a broad view of
10 constitutional standing in civil rights cases,
11 especially where, as under the ADA, private enforcement
12 suits are the primary method of obtaining compliance.
13 Chapman v. Pier 1 Imports, 631 F.3d 939, 946 (9th Cir.
14 2011).

15 Here, Plaintiff has alleged that he visited
16 Defendant's Lake Elsinore store and made purchases
17 three times on May 9, 2011; May 25, 2011; and May 16,
18 2012. Kohler Decl. ¶ 5. Plaintiff further states that
19 during these visits he encountered nine architectural
20 barriers that violate both state and federal law. Id.
21 ¶ 8. Under the ADA, a disabled person suffers an
22 injury-in-fact when discriminatory architectural
23 barriers deter him from returning or they "otherwise
24 interfere with his access to" the facility. Chapman,
25 631 F.3d at 950. In this Action, for each barrier
26 encountered, Plaintiff has indicated how the barrier
27 has affected or could affect his access to the facility
28 in the future. Kohler Decl. ¶ 8. For example,

Plaintiff states that when the slope and cross slope of a disabled parking space exceeds the maximum allowed under the ADA Accessibility Guidelines ("ADAAG"),² it makes it difficult for him to transfer in and out of a vehicle. *Id.* ¶ 8(c). This is sufficient to meet the injury-in-fact requirement for standing because it gives rise to a plausible inference that Plaintiff will be deterred from visiting Defendant's store in the future. *See, e.g. Kohler v. CJP, Ltd.*, 818 F. Supp. 2d 1169, 1174-45 (C.D. Cal. 2011), *Kohler v. Bed Bath & Beyond of Cal., LLC*, No. 11-1246, 2012 WL 2449928 (C.D. Cal. June 27, 2012). Accordingly, Plaintiff has constitutional standing to raise his ADA claims.

D. Summary Judgment As To ADA Claims

i. Slope and Cross Slopes of Disabled Parking Spaces

Under the ADA, liability for non-compliance is assigned to "any person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12181(a). Here, the Court finds that Defendant does not own, lease, or operate the parking lot at Lake Elsinore Marketplace ("Shopping Center") and is therefore not liable under the ADA.

Accordingly, the Court **DENIES** Plaintiff's Motion and **GRANTS** Defendant's Cross-Motion for Summary Judgment

² The ADA Architectural Guidelines ("ADAAG") are codified in the Code of Federal Regulations.

1 regarding the slope and cross slopes of the disabled
2 parking spaces in the Shopping Center.

3 First, Defendant is one of several establishments
4 that lease store space at the Shopping Center from Lake
5 Elsinore Marketplace LLC ("Landlord"). Furthermore, it
6 is undisputed that Defendant does not own the parking
7 lot at the Shopping Center and Plaintiff does not argue
8 that Defendant operates the parking lot. Therefore,
9 the only issue that needs to be addressed is whether
10 Defendant leases the parking lot for the purposes of
11 liability under the ADA.

12 Under Defendant's lease agreement with Landlord,
13 the parking lot is deemed a "Common Area" and is
14 "available for the joint use and benefit" of Defendant,
15 other Shopping Center tenants, and customers. Freeman
16 Decl., Ex. 1. Furthermore, the lease also states that
17 "Landlord shall operate, maintain, repair and replace
18 the Common Areas as required by the Lease . . . and
19 Landlord shall comply with all applicable Legal
20 Requirements." Id.

21 It is Plaintiff's main contention that Defendant
22 "leases" the parking lot, and while Landlord may be
23 jointly liable, Defendant cannot be excused from
24 responsibility under the ADA. Plaintiff's contention
25 is misguided. The lease explicitly states that the
26 parking lot is a common area, which is firmly in the
27
28

1 control of Landlord.³ Plaintiff has supplied no
2 specific evidence to controvert the contents of the
3 lease. Accordingly, Landlord is the party responsible
4 for ADA compliance of the parking lot. Cf. Restatement
5 (Second) of Property: Landlord & Tenant § 17.3
6 (landlord liable to tenants and third parties on
7 portions of property that remain in landlord's
8 control).

9 Plaintiff relies on Botosan v. Paul McNally Realty
10 to argue that Defendant cannot contract away its
11 responsibilities under the ADA. 216 F.3d 827 (9th Cir.
12 2000). However, Plaintiff's reliance is misplaced.
13 Plaintiff contends that, under Botosan, a lease
14 agreement cannot excuse a party from liability under a
15 civil rights statute. However, Botosan is
16 distinguishable because in that case it was the
17 landlord trying escape liability by pointing to lease
18 provisions handing over responsibility to the tenant.
19 Id. at 832. The Ninth Circuit held that as an owner of
20 the public accommodation, the landlord was still
21 explicitly liable under the ADA, despite the lease
22

23 ³ In addition to the language in the lease itself,
24 this finding is also supported by the definitions of
25 "lease," "possessory interest," and "common area,"
26 which are located in Black's Law Dictionary (9th ed.
27 2009).
28

1 provisions. Id. at 832-34. Here, Defendant is the
2 *tenant* who never owned or had any control over the
3 parking lot in the first place. Moreover, the lease
4 between Defendant and Landlord makes clear that
5 Defendant never accepted any control or responsibility
6 over the parking lot. Freeman Decl., Ex. 1. Thus,
7 Defendant is not trying to contract away its
8 responsibilities and is not liable under the ADA
9 statute for the parking lot. Therefore, the Court
10 **GRANTS** Defendant's Cross-Motion for Summary Judgment as
11 to the disabled parking spaces.

12 ii. Slope and Cross Slopes of Access
13 Aisles in the Parking Lot

14 For the same reasons as above, the Court **DENIES**
15 Plaintiff's Motion and **GRANTS** Defendant's Cross-Motion
16 for Summary Judgment with regard to the access aisles
17 in the parking lot. The parking lot, where the access
18 aisles are located, is a common area which is under the
19 control of Landlord and not leased by Defendant.
20 Accordingly, the party responsible for ADA compliance
21 is Landlord, not Defendant.

22 iii. Self-Closing Bathroom Stall Door

23 The Court finds that Plaintiff's asserted barrier
24 that the bathroom stall door is not self-closing is
25 **moot** under the ADA. Regardless of whether or not the
26 alleged barrier existed at the times that Plaintiff
27 visited Defendant's store, there is no genuine issue
28 regarding the fact that the barrier does not exist now.

1 ADAAG § 4.23.4 requires an "outward swinging, self-
2 closing door" for at least one stall in a public
3 accommodation restroom. Plaintiff's last visit to the
4 store was on May 16, 2012. Kohler Decl. ¶¶ 5-7. At
5 that time, Plaintiff states that the stall door was not
6 self-closing, attaching photographs for support.
7 Kohler Decl. ¶¶ 7, 8(g); Ex. B at 9-10. However, more
8 recently, on June 5, 2012, a service technician hired
9 by Defendant states that the stall door was equipped
10 with self-closing hinges, attaching photographs he took
11 that day. Cerda Decl. ¶ 3, Ex. 2. In addition,
12 Defendant's expert, a Certified Access Specialist,
13 states that he has seen these photographs and can
14 attest to the fact that the bathroom stall door is
15 self-closing and ADA compliant. Wood Decl. ¶ 8.
16 Plaintiff has submitted no evidence to contradict the
17 fact that on June 5, 2012, the bathroom stall door was
18 ADA compliant. Plaintiff's only response has been to
19 object to Defendant's Declarations on the basis of
20 procedural defects. Therefore, the Court finds that
21 there is no genuine issue of material fact regarding
22 the bathroom stall door being self-closing at this
23 time.

24 Since Plaintiff's asserted barrier does not exist
25 at this time, Plaintiff cannot obtain relief from this
26 Court. "Because a private plaintiff can sue only for
27 injunctive relief (i.e., for removal of the barrier)
28 under the ADA, a defendant's voluntary removal of

1 alleged barriers prior to trial can have the effect of
 2 moot a plaintiff's ADA claim." Oliver v. Ralphs
 3 Grocery Co., 654 F.3d 903, 905 (9th Cir. 2011).

4 Consequently, Plaintiff's ADA claim for the bathroom
 5 stall door is **moot**. See, e.g. Kohler v. Bed Bath &
 6 Beyond of Cal., LLC, No. 11-01246, 2012 WL 2449928
 7 (C.D. Cal. June 27, 2012); Rush v. Fresh and Easy
 8 Neighborhood Mkt., Inc., No. 10-09304 (C.D. Cal. Dec.
 9 6, 2011). Therefore, the Court **DENIES** Plaintiff's
 10 Motion and **GRANTS** Defendant's Cross-Motion for Summary
 11 Judgment on this issue.

12 Furthermore, the Court rejects Plaintiff's argument
 13 that his claim is not moot because Defendant is free to
 14 return to the offending conduct at any time. There is
 15 no evidence or any reason to suggest that Defendant
 16 will revert back to non-compliance with the ADA.

17 Friends of the Earth v. Laidlaw Env'tl. Servs., 528 U.S.
 18 167, 170 (2000) ("A case might become moot if
 19 subsequent events make it absolutely clear that
 20 allegedly wrongful behavior could not reasonably be
 21 expected to recur."). Plaintiff's argument is
 22 illogical because there is no benefit for Defendant in
 23 reverting back to non-compliance and doing so would
 24 actually cost Defendant more than maintaining
 25 compliance.

26 iv. Strike Side Clearance at Entrance to
 27 Men's Restroom

28 The Court finds as a matter of law that Plaintiff

1 has not asserted an actionable barrier under the ADA
2 with regard to the strike side clearance at the door
3 entering the men's restroom. Accordingly, the Court
4 **DENIES** Plaintiff's Motion and **GRANTS** Defendant's Cross-
5 Motion for Summary Judgment on this point.

6 At issue here is whether or not the ADA's
7 requirements for strike side door clearance refer to
8 wall space or floor space. For physical structures to
9 comply with the ADA, they must meet the requirements
10 set forth in ADAAG. The disputed question of law here
11 pertains to ADAAG § 4.13.6 and its accompanying
12 illustration, Figure 25. Section 4.13.6 sets forth the
13 following:

14
15 **Maneuvering Clearances at Doors.** Minimum
16 maneuvering clearances at doors that are not
17 automatic or power-assisted shall be as shown in
18 Fig. 25. The floor or ground area within the
19 required clearances shall be level and clear.

20
21 Figure 25 contains diagrams illustrating the
22 maneuvering clearances required for the two sides of
23 different kinds of doors and approaches. The diagram
24 at issue here is part of Fig. 25(a), which pertains to
25 the pull-side, front approach of swinging doors. The
26 corresponding note to Fig. 25(a) states the following:

27
28 Front approaches to pull side of swinging doors

1 shall have maneuvering space that extends 18 in
2 (455mm) minimum beyond the latch side of the door
3 and 60 in (1525 mm) minimum perpendicular to the
4 doorway.

5
6 It is Plaintiff's contention that, based on the
7 diagram on the left side of Fig.25(a), the ADA requires
8 eighteen inches of clearance on the strike side *wall* of
9 the restroom door. Plaintiff states that right now
10 there is less than twelve inches of wall space on the
11 strike side because there is a hallway directly
12 adjacent to the restroom entrance. Kohler Decl.

13 ¶ 8(a). However, the Court finds that the diagram on
14 the left side of Fig. 25(a) actually requires eighteen
15 inches of *clear floor space* on the strike side of the
16 door, not wall space. Defendant's store has four feet
17 of clear floor space on the strike side of the restroom
18 entrance because of the adjacent hallway. Wood Decl.
19 ¶ 5.

20 Just by looking at Fig. 25(a) and the accompanying
21 notes, there are several indicators that the eighteen-
22 inch requirement references floor space. First, the
23 dotted line representing the boundary of clear floor
24 area is defined by ADAAG. ADAAG § 3.1, Table 1
25 (Graphic Conventions). However, the solid black line
26 that appears to represent the wall is not defined. Id.
27 It is illogical that ADAAG would set requirements for
28 that undefined solid black line when, in comparison,

1 the dotted line, representing the floor space, has been
2 clearly defined by the regulations. If the diagram
3 referred to wall space, ADAAG would have defined the
4 solid black line. Moreover, the notes accompanying
5 Fig. 25(a) reference "maneuvering space," which as
6 Defendant has noted, implies the space needed for a
7 wheelchair to back up and move forward in order to
8 navigate through the doorway. See Wood Decl. ¶ 6. It
9 is unclear how the length of the wall factors into the
10 need to back up and move forward in a wheelchair.
11 Also, the word "wall" is absent from Fig. 25(a) and the
12 accompanying notes. However, the floor area is
13 explicitly referenced in ADAAG § 4.13.6, which Fig. 25
14 is attached to. Thus, based on the regulation and
15 associated diagrams, the Court finds that the eighteen-
16 inch requirement pertains to clear floor space on the
17 strike side of the door.

18 Moreover, Defendant supplies expert opinion, from a
19 Certified Access Specialist, that further supports a
20 finding that the strike side clearance under ADAAG
21 § 4.13.6 and Fig. 25 is unrelated to wall length. See
22 Wood Decl. ¶¶ 5-7. The expert's opinion is based on
23 experience and several government publications
24 regarding disabled access including (1) guides published
25 by the Department of Justice, (2) two California
26 Building Code manuals, and (3) the United States Access
27 Board's Scoping and Technical Requirements clarifying
28 ADAAG § 4.13.6. Id. at Ex. 1-9.

1 Accordingly, the Court finds as a matter of law
2 that the strike side clearance requirements under ADAAG
3 § 4.13.6 and Fig. 25 refers to clear floor space, not
4 wall space. See Kohler v. Bed Bath & Beyond of Cal.,
5 LLC, No. 11-01246, 2012 WL 2449928, at *11 (C.D. Cal.
6 June 27, 2012) (also finding that strike side clearance
7 under ADAAG § 4.13.6 and Fig. 25 is unrelated to wall
8 length). Since Plaintiff has made no allegations that
9 the strike side floor space is in violation of the
10 ADAAG requirements, the Court **GRANTS** Defendant's Cross-
11 Motion for Summary Judgment on this issue. Plaintiff
12 has failed to allege a violation of the ADA regarding
13 strike side clearance.

14 v. Toilet Tissue Dispenser Location

15 The Court also finds that Plaintiff's alleged
16 barrier regarding the toilet paper dispenser in the
17 men's restroom is not actionable under the ADA.
18 Therefore, the Court **DENIES** Plaintiff's Motion and
19 **GRANTS** Defendant's Cross-Motion for Summary Judgment on
20 this issue.

21 Plaintiff alleges that the toilet paper dispenser
22 violates the ADA because the second roll of toilet
23 paper is further than twelve inches from the front of
24 the toilet seat. Plaintiff gets this twelve-inch
25 measurement from the California Building Code. CBC
26 § 1115(b)(9)(3). However, California law does not
27 govern Plaintiff's ADA claim. Moreover, under the
28 ADAAG regulations, restroom stalls do not require a

1 specific measurement from the front of the toilet seat
2 to the last roll in the dispenser. The requirements
3 for ADA compliance of toilet paper dispensers in
4 restroom stalls can be found in ADAAG § 4.16.6.

5
6 **Dispensers.** Toilet paper dispensers shall be
7 installed within reach, as shown in Fig. 29(b).
8 Dispensers that control delivery, or that do not
9 permit continuous paper flow, shall not be used.

10
11 Figure 29(b) only indicates that a toilet paper
12 dispenser must be a minimum of nineteen inches from the
13 floor. There is no reference to the distance a toilet
14 paper dispenser must be from the front of the toilet
15 seat. See Fig. 29(b). Plaintiff has made no
16 allegations regarding the height of the toilet paper
17 dispenser. Accordingly, Plaintiff has not asserted an
18 actionable barrier under the ADA with regard to the
19 toilet paper dispenser. See Strong v. Walgreen Co.,
20 No. 09-611, 2011 WL 5374125, at *9 (S.D. Cal. Nov. 8,
21 2011); cf. Kohler v. Bed Bath & Beyond of California,
22 LLC, No. 11-01246, 2012 WL 2449928, at *12 (C.D. Cal.
23 June 27, 2012).

24 vi. Mounting of Paper Towel Dispenser

25 The Court finds that Plaintiff's alleged barrier
26 regarding the mounting of the paper towel dispenser is
27 not actionable under the ADA. Plaintiff only alleges
28 that the paper towel dispenser violates state law,

1 specifically CBC § 1115(b)(9)(2), which requires the
2 dispenser to be mounted within forty inches of the
3 floor. Therefore, the Court need not consider this
4 barrier in the context of Plaintiff's ADA claims.

5 Furthermore, even if the paper towel dispenser
6 mounting was actionable under the ADA, the Court cannot
7 consider this barrier because Plaintiff did not assert
8 it in his Complaint. The Ninth Circuit has held that
9 in order for a defendant in an ADA action to have fair
10 notice of a claim under Federal Rule of Civil Procedure
11 8, a plaintiff must identify all alleged barriers in
12 the complaint itself. Oliver, 654 F.3d at 909.

13 Accordingly, the Court **DENIES** Plaintiff's Motion
14 and **GRANTS** Defendant's Cross-Motion for Summary
15 Judgment on this issue under the ADA.

16 vi. Paper Towel Dispenser Controls

17 The Court finds that Plaintiff's alleged barrier
18 regarding the paper towel dispenser requiring "tight
19 grasping, pinching, or twisting of the wrist" is **moot**
20 under the ADA.

21 ADAAG § 4.27.4 governs the instant issue and states
22 that "controls and operating mechanisms shall be
23 operable with one hand and shall not require tight
24 grasping, pinching, or twisting of the wrist." On May
25 16, 2012, Plaintiff states that he encountered the
26 paper towel dispenser at Defendant's store and that it
27 required tight grasping, pinching or twisting of the
28 wrist. Kohler Decl. ¶ 7, 8(j); Ex. B at 11. However,

1 a service technician hired by Defendant states that as
2 of June 21, 2012, there are two paper towel dispensers
3 in the men's restroom. Jaggli Decl. ¶ 2. One of the
4 dispensers can be operated with a closed fist, and is
5 thus ADA compliant. Id. It is clear from the attached
6 photographs that no tight grasping, pinching, or
7 twisting of the wrist is required. Id. at Ex. 1.
8 Also, Defendant's Certified Access Specialist has seen
9 the service technician's Declaration and the
10 photographs, and has attested to the dispenser's
11 compliance with the ADA. Wood Decl. ¶ 11. Plaintiff
12 has submitted no evidence that contradicts the more
13 recent observations regarding the paper towel
14 dispenser. Therefore, the Court finds that there is no
15 genuine issue of material fact regarding the paper
16 towel dispenser controls in the men's restroom at this
17 time.

18 Since Plaintiff's asserted barrier does not exist
19 at this time, Plaintiff cannot obtain relief from this
20 Court under the ADA. Thus, Plaintiff's claim regarding
21 the paper towel dispenser controls is **moot**. See
22 Oliver, 654 F.3d at 905. Moreover, it cannot
23 reasonably be expected that non-compliance will recur
24 because recurrence would cost rather than benefit
25 Defendant. Friends of the Earth, 528 U.S. at 170. The
26 Court therefore **DENIES** Plaintiff's Motion and **GRANTS**
27 Defendant's Cross-Motion on this issue.

28 vii. Insulation of Undersink Pipes

1 As to Plaintiff's asserted barrier that the drain
2 pipes under the sinks in the restroom lack sufficient
3 insulation, the Court finds that this claim is also
4 **moot**.

5 ADAAG § 4.19.4 requires that hot water and drain
6 pipes under lavatories be "insulated or otherwise
7 configured to protect against contact." Plaintiff has
8 submitted a photograph he took on May 16, 2012 of
9 barely exposed pipes under the sinks in the men's
10 restroom. Kohler Decl. ¶ 7, 8(i); Ex. B at 9.
11 However, as with other asserted barriers already
12 addressed, Defendant submits photographs and
13 Declarations that indicate that as of a more recent
14 date, June 5, 2012, this condition does not exist.
15 There are no exposed pipes underneath the sinks. Cerda
16 Decl. ¶ 2, Ex. 1.; Wood Decl. ¶ 12. Plaintiff has
17 submitted no evidence contradicting the more recent
18 observations regarding the pipes in the restroom.
19 Therefore, the Court should find that there is no
20 genuine issue of material fact that as of June 5, 2012,
21 the insulation on the pipes underneath the sinks are
22 ADA compliant.

23 Since Plaintiff's asserted barrier does not exist
24 at this time, Plaintiff cannot obtain relief from this
25 Court under the ADA and Plaintiff's claim is **moot**. See
26 Oliver, 654 F.3d at 905. Furthermore, it cannot
27 reasonably be expected that non-compliance will recur
28 because, again, there is no conceivable benefit to

1 Defendant in returning to non-compliance. Friends of
2 the Earth, 528 U.S. at 170. Instead, recurrence would
3 likely cost Defendant. The Court thus **DENIES**
4 Plaintiff's Motion and **GRANTS** Defendant's Cross-Motion
5 for Summary Judgment on this issue.

6 ix. Strike Side Clearance at Men's
7 Restroom Exit

8 As to Plaintiff's final asserted barrier, regarding
9 the strike side clearance at the door when exiting the
10 men's restroom, the Court finds that Plaintiff has not
11 asserted an actionable barrier under the ADA.
12 Accordingly, the Court **DENIES** Plaintiff's Motion and
13 **GRANTS** Defendant's Cross-Motion for Summary Judgment on
14 this issue.

15 The previous analysis regarding the strike side
16 clearance at the entrance of the men's restroom applies
17 to this alleged barrier as well. Plaintiff again cites
18 to ADAAG § 4.13.6 and Fig. 25 arguing that the
19 requirements refer to wall space. However, as already
20 stated, the strike side clearance requirements under
21 ADAAG § 4.13.6 and Fig. 25 set minimum dimensions for
22 *clear floor space*, not wall space. Since Plaintiff has
23 made no allegations regarding the floor space violating
24 the strike side clearance requirements, Plaintiff has
25 not asserted an actionable barrier under the ADA.

26 In summary, the Court **DENIES** Plaintiff's Motion and
27 **GRANTS** Defendant's Cross-Motion for Summary Judgment on
28 all of Plaintiff's ADA claims.

1 **E. Plaintiff's State Law Claims**

2 The only basis of jurisdiction over Plaintiff's
3 state law claims is supplemental. The Court's original
4 jurisdiction over this Action was based on federal
5 question jurisdiction pursuant to Plaintiff's ADA
6 claims.⁴ Since the Court has granted Defendant's Cross-
7 Motion for Summary Judgment on all of Plaintiff's ADA
8 claims, the only claims remaining now are the state law
9 claims under the Unruh Act and CDPA.

10 Moreover, the Court has authority to decline to
11 exercise supplemental jurisdiction over these state
12 claims because it "has dismissed all claims over which
13 it has original jurisdiction." 28 U.S.C. § 1367(c).
14 The Supreme Court has held that supplemental
15 jurisdiction is discretionary and that "needless
16 decisions of state law should be avoided both as a
17 matter of comity and to promote justice between the
18 parties." United Mine Workers of America v. Gibbs, 383
19 U.S. 715, 726 (1966). Here, to adjudicate the
20 remaining state claims would require knowledge of the
21 California Building Code, the California Health &
22 Safety Code, and other state laws and regulations. A
23 state court would be a better venue for these issues.
24 Therefore, the Court declines to exercise supplemental

25
26 ⁴ Neither party has asserted any facts to support
27 diversity jurisdiction, and it appears that both
28 Parties are citizens of California.

jurisdiction and **DISMISSES** Plaintiff's state law claims **without prejudice**. See, e.g. Kohler v. Bed Bath & Beyond of Cal., LLC, No. 11-01246, 2012 WL 2449928 (C.D. Cal. June 27, 2012); Rush v. Fresh and Easy Neighborhood Mkt., Inc., No. 10-09304 (C.D. Cal. Dec. 6, 2011).

IV. CONCLUSION

The Court hereby **OVERRULES** all of Plaintiff's Evidentiary Objections and **DENIES** Defendant's Requests for Judicial Notice. The Court also **DENIES** Plaintiff's Motion for Summary Judgment. In addition, for the above stated reasons, the Court **GRANTS** Defendant's Cross-Motion for Summary Judgment as to Plaintiff's ADA claims. The Court **DISMISSES without prejudice** Plaintiff's remaining state law claims.

IT IS SO ORDERED.

DATED: July 23 , 2012.

RONALD S.W. LEW

HONORABLE RONALD S.W. LEW
Senior, U.S. District Court Judge